IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

MFA.No. 1257 of 2001(B)

OP(MV).594/1994 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT/PETITIONER:

THIRUMAL @ CHINNASAMY,
S/O. NALLAN, RESIDING AT POOSSERIPETTI DESOM AND VILLAGE,
POOSSARIPETTI P.O., POLLACHI VILLAGE, COIMBATORE DIST.,
TAMIL NADU.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS
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1. **MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORTION, TRIVANDRUM.**

2. **VIJAYAN, S/O. EASWARA PANIKKER, ANGEMADATHIL HOUSE, EDOOR DESOM, ARALAM VILLAGE, THALASSERY TALUK, KANNUR DIST.**

3. **K. KAMALAM, W/O. KUPPUSWAMY, 78 KARUR ROAD, ERODE-2.**

4. **GOPINATHAN, S/O. KUNJAN NAIR, DOOR NO. 5, NO. 3, KARUMAYA ST. CHETTIPALAYAM VILLAGE/ TALUK, PERIYAR DIST.**

M.F.A NO. 1257/2001

5. UNITED INDIA INSURANCE CO. LTD.,
VALLI COMPLEX, II FLOOR, METTUR ROAD,
ERODE- 638 011.

BY ADV. SRI.P.V.JYOTHI PRASAD
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No.1257 of 2001

Dated this the 10th day of December, 2007

Judgment

Koshy,J.

Appellant/Claimant met with an accident on 10.12.1993 while he was walking along the road from Chalakkudy-Perumbavoor through the Thrissur-Ernakulam sector of National Highway. At that time, a K.S.R.T.C. bus owned by the first respondent and driven by the second respondent came in a terrific speed and hit down the appellant. Meanwhile, another vehicle bearing registration No.TN 33 B 6464 came in over speed and ran over the left leg and the left hand of the appellant causing serious crush injuries to the hand and leg. He was treated for a long time and his left hand was amputated above the elbow. Wound certificate also shows that he had serious fracture to the left leg. Against a claim of Rs.5,66,500/-, total amount awarded was only Rs.1,49,600/- even though tribunal found that the accident occurred due to the negligence of the drivers of the vehicle owned by the first respondent and the vehicle owned by the third respondent and insured by the fifth respondent insurance

company. The tribunal apportioned the negligence equally. Only quantum of compensation is disputed in this appeal.

2. Appellant was doing cattle business and he claimed Rs.3,000/- as his monthly income. The tribunal fixed only Rs.1,000/- as the monthly income. He was aged 45 at the time of accident and he was maintaining a family. Taking all these circumstances, we are of the opinion that Rs.2,000/- ought to have been fixed as his monthly income. With regard to the disability due to amputation and serious fracture of the leg, it is the case of the appellant that at least compensation for 80% disability ought to have been granted. Considering the totality of evidence, we are of the view that 50% disability assessed by the tribunal needs no interference. Therefore, since the deceased was aged 45 at the time of accident and taking guidance from the second schedule, tribunal has taken 13 as the multiplier. We see no ground to interfere in the same. Therefore, compensation payable will be Rs.2000 x 12 x $\frac{50}{100}$ x 13 = Rs.1,56,000/-. The tribunal has awarded only Rs.78,000/- for disability. Therefore, claimant will be entitled to an amount of Rs.78,000/- for disability and loss of earning power. The tribunal found that he was under treatment for six months and for actual

loss of earning taking Rs.2,000/- as the monthly income, he is entitled to another Rs.6,000/- on that ground. Therefore, he is entitled to an additional amount of Rs.84,000/-. Even though it was argued that compensation under other heads are inadequate, we see no ground to interfere especially in view of the total amount of additional compensation of Rs.84,000/-. The above amount of Rs.84,000/- over and above the amount decreed by the tribunal shall be deposited by the 1st and 5th respondents in equal shares with 7.5% from the date of application till its deposit. Since the accident occurred in 1993, appellant is allowed to withdraw the same on deposit.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1257 of 2001

Judgment

Dated:10th December, 2007